

# *COMMONWEALTH of VIRGINIA*

## *DEPARTMENT OF ENVIRONMENTAL QUALITY*

PIEDMONT REGIONAL OFFICE

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L. Preston Bryant, Jr.  
Secretary of Natural Resources

David K. Paylor  
Director

### **STATE WATER CONTROL BOARD ENFORCEMENT ACTION SPECIAL ORDER BY CONSENT ISSUED TO MOUNTAIN RUN GOLF, INC. AND MOUNTAIN RUN, LLC**

#### **SECTION A: Purpose**

This is a Consent Special Order issued under the authority of Va. Code § 62.1-44.15(8a) and § 62.1-44.15(8d), between the State Water Control Board, Mountain Run Golf, Inc. and Mountain Run, LLC for the purpose of resolving certain violations of State Water Control Law and regulations.

#### **SECTION B: Definitions**

Unless the context clearly indicates otherwise, the following words and terms have the meaning assigned to them below:

1. "Act" means Va. Code § 62.1-44.15:20, Virginia Water Protection Permit.
2. "Board" means the State Water Control Board, a permanent citizens' board of the Commonwealth of Virginia as described in Va. Code §§ 10.1-1184 and 62.1-44.7.
3. "Department" or "DEQ" means the Department of Environmental Quality, an agency of the Commonwealth of Virginia as described in Va. Code § 10.1-1183.
4. "Director" means the Director of the Department of Environmental Quality.
5. "Discharge" means, when used without qualification, a discharge of a pollutant, or any addition of a pollutant or combination of pollutants, to state waters or waters of the contiguous zone or ocean other than a discharge from a vessel or other floating craft when being used as a means of transportation.

6. "Fill material" means any pollutant which replaces portions of surface water with dry land or which changes the bottom elevation of a surface water for any purpose. 9 VAC 25-210-10.
7. "Mountain Run" means Mountain Run Golf, Inc. and Mountain Run, LLC, collectively, and their affiliates, partners, subsidiaries, and parents. Both corporations are certified to do business in Virginia.
8. "Order" means this document, also known as a Consent Special Order.
9. "Person" means one or more individuals, a corporation, a partnership, an association, a governmental body, a municipal corporation, or any other legal entity.
10. "Permit" means VWP Permit No. 00-0194, which was issued to Mountain Run, LLC by the State Water Control Board on July 18, 2001 under § 62.1-44.15:20 of the Code of Virginia, and authorized impacts to wetlands and streams associated with the construction of the Mountain Run Golf Course.
11. "Property" or "Site" means the Mountain Run subdivision and golf course, located in Hanover County at the southeast quadrant of the intersection of US Route 33 and the South Anna River, and owned by Mountain Run, Inc.
12. "Surface water" means all state waters that are not ground waters as defined in § 62.1-255 of the Code of Virginia.
13. "Va. Code" means the Code of Virginia (1950) as amended.
14. "VWP permit" means Virginia Water Protection Permit, an individual permit issued by the State Water Control Board under § 62.1-44.15:20 of the Code of Virginia.
15. "Wetlands" means those areas that are inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas. 9 VAC 25-210-10.

#### **SECTION C: Findings of Fact and Conclusions of Law**

1. Mountain Run is a Person pursuant to 9 VAC 25-210-10, and owns and operates a golf course bordering the South Anna River in Hanover County.
2. Construction of the golf course included impacts to wetlands and streams resulting from the placement of fill material in those areas, and the creation of impoundments, which flooded streams and wetlands. DEQ issued the Permit to authorize these and other impacts associated with the golf course and a surrounding residential development.

3. On August 26, 2008, DEQ Piedmont Regional Office staff conducted an inspection of the Site.
4. Staff observed a portable pump with an 8 inch diameter intake structure withdrawing water from the South Anna River. The water was discharged to one of the impoundments authorized by the Permit. The water was then withdrawn from the impoundment and used for irrigation. The Permit did not authorize a water withdrawal from the impoundment or the South Anna River.
5. A review of records provided by the pump rental company indicated that Mountain Run had rented the pump during 8 separate periods from 2005 through 2008. The pump has a withdrawal capacity of approximately 1,250 gallons per minute (1.8 million gallons per day).
6. A review of DEQ files indicated that in 2005, Mountain Run Golf, Inc. applied for a VWP permit authorizing a water withdrawal from the South Anna River (Joint Permit Application No. 05-2153). DEQ notified Mountain Run Golf, Inc. that a \$20,000 permit fee was required to complete the application on December 15, 2005. Mountain Run Golf, Inc. never completed the application by paying the permit fee; therefore a VWP permit was never issued for the requested water withdrawal.
7. Va. Code § 62.1-44.15:20.A and 9 VAC 25-210-50.A of the VWP Permit Regulations state that except in compliance with a VWP Permit, no person shall withdraw surface water [or] otherwise alter the physical, chemical or biological properties of surface waters and make them detrimental to the public health, or to animal or aquatic life, or to the uses of such waters for domestic or industrial consumption, or for recreation, or for other uses.
8. VWP Permit 00-0194 requires the creation of 1.52 acres of forested wetlands as mitigation for wetland impacts on the Site. Construction of this wetland creation area was completed in 2006, but no monitoring reports for this area were submitted, as required by Part I.45. Compliance with all provisions of the Permit is required by 9 VAC 25-210-90 of the VWP Permit Regulation.
9. On October 14, 2008, DEQ issued Notice of Violation No. 08-09-PRO-700 to Mountain Run for the alleged violation of its Permit, the Regulation, and State Water Control Law, as described in Items 4 through 8, above.
10. On November 6, 2008, DEQ staff and representatives of Mountain Run met on the Site to discuss the alleged violations. The site visit revealed that no monitoring had ever been conducted on the wetland creation area, as required by Part I.37 of the permit, and that the creation area was unsuccessful. DEQ staff instructed Mountain Run representatives to develop a corrective action plan for the creation area or an alternative mitigation plan. Mountain Run representatives also indicated that they would submit a Joint Permit Application requesting authorization from DEQ for the water withdrawal.

11. On July 21, 2009, DEQ staff met again with a representative of Mountain Run. Documents submitted by Mountain Run indicate that the companies are unable to pay a civil charge.

#### **SECTION D: Agreement and Order**

Accordingly, by virtue of the authority granted it in Va. Code §§ 62.1-44.15(8a) and (8d), the Board orders Mountain Run, and Mountain Run agrees to abide by the requirements of Appendix A and perform the actions described in Appendix B of this Order.

#### **SECTION E: Administrative Provisions**

1. The Board may modify, rewrite, or amend the Order with the consent of Mountain Run, for good cause shown by Mountain Run, or on its own motion after notice and opportunity to be heard.
2. This Order only addresses and resolves those violations specifically identified herein, including those matters addressed in Section C, above. This Order shall not preclude the Board or the Director from taking any action authorized by law, including but not limited to: (1) taking any action authorized by law regarding any additional, subsequent, or subsequently discovered violations; (2) seeking subsequent remediation of the Property as may be authorized by law; or (3) taking subsequent action to enforce the Order. This Order shall not preclude appropriate enforcement actions by other federal, state, or local regulatory authorities for matters not addressed herein.
3. For purposes of this Order and subsequent actions with respect to this Order, Mountain Run admits the jurisdictional allegations, factual findings, and conclusions of law contained herein.
4. Mountain Run consents to venue in the Circuit Court of the City of Richmond for any civil action taken to enforce the terms of this Order.
5. Mountain Run declares it has received fair and due process under the Administrative Process Act, Va. Code §§ 2.2-4000 *et seq.*, and the State Water Control Law and it waives the right to any hearing or other administrative proceeding authorized or required by law or regulation, and to any judicial review of any issue of fact or law contained herein. Nothing herein shall be construed as a waiver of the right to any administrative proceeding for, or to judicial review of, any action taken by the Board to enforce this Order.
6. Failure by Mountain Run to comply with any of the terms of this Order shall constitute a violation of an order of the Board. Nothing herein shall waive the initiation of appropriate enforcement actions or the issuance of additional orders as appropriate by the

Board or the Director as a result of such violations. Nothing herein shall affect appropriate enforcement actions by any other federal, state, or local regulatory authority.

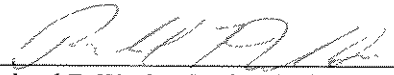
7. If any provision of this Order is found to be unenforceable for any reason, the remainder of the Order shall remain in full force and effect.
8. Mountain Run shall be responsible for failure to comply with any of the terms and conditions of this Order unless compliance is made impossible by earthquake, flood, other acts of God, war, strike, or such other occurrence. Mountain Run shall show that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. Mountain Run shall notify the DEQ Regional Director in writing when circumstances are anticipated to occur, are occurring, or have occurred that may delay compliance or cause noncompliance with any requirement of the Order. Such notice shall set forth:
  - a. the reasons for the delay or noncompliance;
  - b. the projected duration of any such delay or noncompliance;
  - c. the measures taken and to be taken to prevent or minimize such delay or noncompliance; and
  - d. the timetable by which such measures will be implemented and the date full compliance will be achieved.

Failure to so notify the Regional Director within 24 hours of learning of any condition above, which intends to assert will result in the impossibility of compliance, shall constitute a waiver of any claim to inability to comply with a requirement of this Order.

9. This Order is binding on the parties hereto, their successors in interest, designees and assigns, jointly and severally.
10. This Order shall become effective upon execution by both the Director or his designee and the Mountain Run Notwithstanding the foregoing, Mountain Run agrees to be bound by any compliance date which precedes the effective date of this Order.
11. This Order shall continue in effect until the Director or Board terminates the Order in his or its sole discretion upon 30 days written notice to Mountain Run Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve Mountain Run from its obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.

12. By its signature below, Mountain Run voluntarily agrees to the issuance of this Order.

And it is so ORDERED this 21<sup>st</sup> day of December, 2009.

  
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Richard F. Weeks, Regional Director  
Department of Environmental Quality

Mountain Run Golf, Inc. and Mountain Run, LLC voluntarily agree to the issuance of this Order.

By: [Signature]

Date: 7/24/09

Commonwealth of Virginia, City/County of Hennico

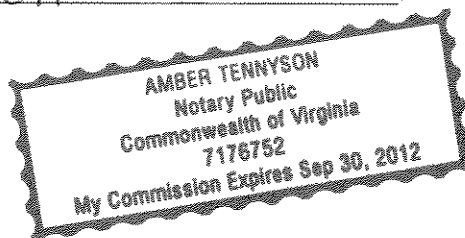
The foregoing document was signed and acknowledged before me this 24 day of

July, 2009, by RICHARD CRISTIAN, who is  
(name)

President of Mountain Run Golf, Inc. and Managing Member of Mountain Run, LLC, on behalf  
of those Corporations.

[Signature]  
Notary Public

My commission expires: 9/30/12



## APPENDIX A INTERIM WATER WITHDRAWAL CONDITIONS

Mountain Run may withdraw water from the South Anna River for one period lasting no longer than 6 consecutive weeks between the dates of July 24 and October 24, 2009. Mountain Run shall conduct the withdrawal in accordance with the following conditions:

- 1) Mountain Run shall notify the DEQ contact listed below in writing at least 24 hours prior to initiating the 6-week withdrawal period. The notification shall include the method by which the flow in the South Anna River will be measured and/or calculated each day.
- 2) The withdrawal of surface water from the South Anna River shall not exceed a maximum *daily* withdrawal volume of 500,000 gallons; shall not exceed a maximum *instantaneous* withdrawal rate of 5% of the daily flow of the South Anna River; and shall be controlled so as to maintain a constant flow-by rate in the South Anna River of 1.0 million gallons per day.
- 3) Mountain Run shall monitor and record withdrawals from South Anna River on a daily basis to confirm that the withdrawals are in compliance with all Appendix A conditions. No later than the Monday of each week, Mountain Run shall submit the following information to DEQ regarding the previous week's withdrawals: daily maximum instantaneous withdrawal rate, daily total withdrawal volume, daily flow in the South Anna River immediately upstream and immediately downstream of the point of withdrawal in cubic feet per second and million gallons per day. Locations of flow determinations for the South Anna River shall be documented on a map submitted with the weekly report.
- 4) In the event that the Governor or the Virginia Drought Coordinator declares a drought emergency in the Middle James Drought Evaluation Region consisting of Amherst, Lynchburg, Nelson, Albemarle, Appomattox, Buckingham, Fluvanna, Prince Edward, Cumberland, Goochland, Amelia, Powhatan, Chesterfield, Petersburg, Hopewell, Colonial Heights, Henrico, and Hanover Counties, Mountain Run shall immediately cease the withdrawal.
- 5) To prevent the impingement and entrainment of fish eggs, larvae, and other aquatic life, the intake screens shall be no larger than 1 millimeter in width and the screen face intake velocities shall be less than 0.25 feet per second. Larger screens or higher intake velocities may be used if written approval by the Virginia Department of Game and Inland Fisheries is obtained prior to initiation of the withdrawal.
- 6) If average daily withdrawal during any single month exceeds 10,000 gallons per day, the water withdrawals shall be reported to DEQ by **January 31, 2010**, as required under State Water Control Board (SWCB) Water Withdrawal Reporting Regulation (9 VAC 25-200 *et seq.*). The annual monitoring report shall contain the following information: Mountain Run's name and address, the sources and locations of water



withdrawal, the cumulative volume of water withdrawn each month of the calendar year, the maximum day withdrawal and the month in which it occurred, and the method of withdrawal measurement.

- 7) Unless otherwise instructed, all submittals to DEQ shall directed to:

Allison Dunaway  
Enforcement Manager  
VA DEQ -- PRO  
4949-A Cox Rd.  
Glen Allen, VA 23060  
Fax: (804) 527-5106  
Email: [Allison.Dunaway@deq.virginia.gov](mailto:Allison.Dunaway@deq.virginia.gov)

## **APPENDIX B COMPLIANCE SCHEDULE**

- 1) **No later than 30 days from the date of this Order**, Mountain Run shall submit an alternative mitigation plan or corrective action plan to fulfill the 1.52 acres of forested wetland mitigation required by the Permit. If an alternative mitigation plan is submitted, the plan shall meet the requirements of 9 VAC 25-210-116 and the submittal shall include a request to modify the Permit if necessary. Mountain Run shall implement the approved plan in accordance with all the terms and schedule therein.
- 2) *Except as authorized in Appendix A of this Order*, Mountain Run shall discontinue all water withdrawals and shall not resume any water withdrawals unless a permit is issued by DEQ.
- 3) Mountain Run shall respond to any Notices of Deficiency regarding any Joint Permit Application, mitigation plan, or corrective action plan submitted to DEQ in accordance with the terms of the Notice.
- 4) Unless otherwise instructed, all submittals to DEQ shall be directed to:

Allison Dunaway  
Enforcement Manager  
VA DEQ – PRO  
4949-A Cox Rd.  
Glen Allen, VA 23060  
Fax: (804) 527-5106  
Email: [Allison.Dunaway@deq.virginia.gov](mailto:Allison.Dunaway@deq.virginia.gov)